

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

In the Matter of

Application by Verizon New England Inc.,  
Verizon Delaware Inc., Bell Atlantic  
Communications, Inc. (d/b/a Verizon Long  
Distance), NYNEX Long Distance Company  
(d/b/a Verizon Enterprise Solutions), Verizon  
Global Networks Inc., and Verizon Select  
Services, Inc., for Authorization to Provide  
In-Region, InterLATA Services in the States  
of New Hampshire and Delaware

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WC Docket No. 02-157

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.**

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## COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. opposes the above-captioned application of Verizon for authorization to provide in-region, interLATA services in New Hampshire and Delaware.<sup>1</sup> The public interest requires that the application be denied unless the Commission is convinced that the local markets have been opened fully and irreversibly to competitive entry. In Sprint's view, this is not yet the case.

<sup>1</sup> Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157 (filed June 27, 2002) (Application).

## **I. INTRODUCTION AND SUMMARY**

### **A. Introduction**

A key purpose of the 1996 amendments to the Communications Act of 1934 (the Act) was to open the local market to competition. To that end, Congress envisioned three avenues of local entry: resale, use of incumbent LEC unbundled network elements and facilities-based competition; and it placed incumbent LECs in the rather unnatural role of assisting their would-be competitors by imposing the interconnection, resale, unbundling and collocation obligations of § 251(c).

To encourage the principal ILECs – the BOCs – to cooperate in this process, Congress enacted the “carrot” of § 271, giving the BOCs the right to enter the interLATA long distance market in-region once their local markets were truly open. The Commission recognized the importance of local market competition in one of the first applications it decided under this section.

Although Congress replaced the MFJ’s structural approach, Congress nonetheless acknowledged the principles underlying that approach that BOC entry into the long distance market would be anticompetitive unless the BOCs’ market power in the local market was first demonstrably eroded by eliminating barriers to local competition. \*\*\* In order to effectuate Congress’ intent, we must make certain that the BOCs have taken real, significant and irreversible steps to open their markets. We further note that Congress plainly realized that, in the absence of significant Commission rulemaking and enforcement, and incentives all directed at compelling incumbent LECs to share their economies of scale and scope with their rivals, it would be highly unlikely that competition would develop in local exchange and exchange access markets to any discernable degree.<sup>2</sup>

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<sup>2</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, ¶18 (1997) (Michigan Order).

If the BOCs are allowed to enjoy the § 271 “carrot” before local competition is fully and irreversibly established, they will have little incentive to cooperate with competitive LECs thereafter, unless they are subject to continuing regulation. Successfully maintaining such a regulatory structure and adapting it to changes in technology will require significant on-going resources of both the Commission and interested parties, with, at best, uncertain results. It would be far preferable to withhold the § 271 “carrot” until local competition is sufficiently entrenched that competitive forces can supplant the intensive regulation and enforcement that otherwise would be required. Sprint does not believe that point has yet been reached in the states for which Verizon is seeking § 271 authorization.

The public interest inquiry should focus on competition in the local market. In the recent decision of the Court of Appeals for the District of Columbia concerning the FCC’s grant of SBC’s 271 application for long distance service in Kansas and Oklahoma remanding the “price squeeze” issue,<sup>3</sup> the court commented on the Commission’s inadequate consideration of the appellants’ claim that the low volume of residential customers in these states and SBC’s pricing which does not provide enough margin to make competition profitable are evidence of a “price squeeze” that is inconsistent with the public interest. The court stated: “Here, as the Act aims directly at stimulating competition, the public interest criterion may weigh more heavily towards addressing potential ‘price squeeze.’” *Id.* at 555. Clearly, the court considers the Act’s goal of “stimulating competition” to refer to competition in the local market, the market

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<sup>3</sup> Joint Application by SBC for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237 (2001), remanded, Sprint Communications Co. L.P. v. FCC, 274 F. 3d 549 (DC Cir. 2001).

adversely affected by a “price squeeze.” Thus, it is appropriate to consider whether the dismal state of competition and the low volume of residential customers served by facilities-based competitors is in the public interest when evaluating a § 271 application.

### **B. Summary**

As shown below, the CLEC industry is in a state of crisis. The past year has been marked by the collapse of many major CLECs and a severe tightening of capital to would-be entrants. Further, the regulatory environment is now in a state of uncertainty as a result of the recent decision of the D.C. Circuit Court of Appeals on UNE standards.<sup>4</sup> Uncertainty now reigns concerning whether or not the Commission will reduce the RBOCs’ UNE and line sharing obligations, creating even more business uncertainty for the competitive industry.

Further evidence of the dismal state of competition is the fact that the RBOCs have failed to establish themselves outside their territory. In the states for which Verizon provides service, the low percentage of CLEC residential lines using all three entry modes indicates that residential competition has not been firmly established.

## **II. THE CLEC INDUSTRY IS IN A STATE OF CRISIS (PUBLIC INTEREST)**

The past year has been marked by the bankruptcy of many of the CLECs that were in the vanguard of the industry: Convergent, Covad, e-Spire, ICG Communications, Metropolitan Fiber Networks, McLeodUSA, Mpower, Net2000, Network Plus, NorthPoint, Rhythms, TeleGlobe, Teligent, Viatel Holding, Williams Communications

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<sup>4</sup> United States Telecom Association v. Federal Communications Commission, Nos. 00-1012 and 00-1015 (D.C. Cir., May 24, 2002). (Petitions for rehearing pending.)

Group, WinStar and XO Communications, to name a few.<sup>5</sup> WorldCOM, which claims to be the largest CLEC in the U.S. in addition to providing long distance services,<sup>6</sup> recently reported financial misrepresentations, and many believe it soon will be forced into bankruptcy. With CLECs facing a very bleak financial situation, investors have unambiguously indicated that they will remain wary of CLEC stocks until it becomes clearer “which CLECs will survive the carnage.”<sup>7</sup> Industry experts agree that when the smoke clears from “the steady stream of Chapter 11 filings in the competitive telecom sector,” only a few CLEC companies will remain.<sup>8</sup> Indeed, the number of CLECs has decreased dramatically from 330 at the end of 2000 to fewer than 80 today.<sup>9</sup> The bleak state of the industry is making it extremely difficult for the surviving CLECs to obtain

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<sup>5</sup> For a more complete list of CLECs that have filed for bankruptcy, *see* Comments of Sprint Communications Company L.P., In the Matter of Joint Application by BellSouth Corporation, Inc., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, filed October 19, 2001, p. 6. Covad emerged from bankruptcy on December 20, 2001. McLeodUSA emerged from bankruptcy under a plan which eliminated approximately \$3 billion in debt and \$325 million in interest. Bankruptcy Court Approves Strategy for Reorganization, *The Wall Street Journal*, A19 (April 8, 2002).

<sup>6</sup> See Statement of Victoria D. Harker before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, June 19, 2002.

<sup>7</sup> Telecom Services – Local: Hoexter’s Broadband Bits, Merrill Lynch Capital markets, K. Hoexter, at \*1 (June 18, 2001).

<sup>8</sup> Telecom Services – Alternative Carriers: Competition Telecom, Morgan Stanley, Dean Witter, P. Kennedy, at \*1 (June 19, 2001).

<sup>9</sup> Yochi J. Dreazen, “FCC’s Powell Says Telecom ‘Crisis’ May Allow a Bell to Buy WorldCom,” The Wall Street Journal, July 15, 2002, p. A4.

capital to expand their facilities. Given the current high risk associated with the CLEC industry, any financing that can be obtained comes at a high price. In the telecom industry, capital spending decreased by 25 % last year and is expected to be another 20 % lower this year. *Id.*

In addition to these financial hurdles, CLECs now face regulatory uncertainty concerning the availability and pricing of UNEs. In its May 24, 2002 opinion, the D.C. Circuit addressed the RBOCs' appeals of the FCC's UNE Remand decision<sup>10</sup> in which the FCC reviewed its definition of "impair" and other unbundling criteria and its list of UNEs in light of the Supreme Court's decision in *Iowa Utilities Board*. The court remanded the Commission's UNE Remand Order in an opinion that displayed some hostility towards UNE-based competition, despite the Supreme Court's recognition, just a few days earlier, that the Commission could set UNE rates so as to promote local competition broadly.<sup>11</sup> The D.C. Circuit's decision, coming in the midst of the Commission's own UNE Review proceeding,<sup>12</sup> creates additional uncertainty for the

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<sup>10</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

<sup>11</sup> Verizon Communications Inc. v. Federal Communications Commission, Nos. 00-511 *et al.* (S. Ct. May 13, 2002).

<sup>12</sup> In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Notice of Proposed Rulemaking, released December 21, 2001.



already troubled competitive industry. At one extreme, the FCC could decide that the RBOCs are no longer required to provision many UNEs in metropolitan areas. Since a significant portion of the competitive industry relies on UNE components, CLEC investments likely will be scaled back until the regulatory environment becomes clearer. In the interim, funding for an industry already under severe financial pressure will be extremely scarce, and what is available will be high-priced.

At a minimum, until decisions are made concerning the availability of UNEs, the Commission must pay more attention to the market shares of the competition. It is highly unlikely that the percentage will increase at the same pace as it has in recent years, given the tumult recounted above. Indeed, it is more reasonable to expect that the market shares of competitors will shrink as the uncertainty about the availability and pricing of UNEs restricts further investments and sends additional competitors into bankruptcy.

### **III. OUT OF REGION RBOCs HAVE FAILED TO COMPETE AGAINST FELLOW RBOCs (PUBLIC INTEREST)**

ILECs have chosen not to compete with each other for customers outside their territories. Why would this be the case? ILECs not only know the local market, but they come equipped with the complex back-office systems needed to provide service efficiently and economically. It is telling, then, that despite earlier assertions to the contrary, the RBOCs have remained largely outside the local competition fray. If local competition were truly enabled, these RBOCs, who are high on the learning curve for the

provision of local service, would have the incentive to enter the local markets outside their serving territories with bundles of local and long distance service.<sup>13</sup>

In its recent order approving Verizon's Section 271 application for Rhode Island, the Commission found that the lack of entry by other carriers – either out-of-region RBOC or CLEC – can be explained by factors beyond the control of the applicant, “such as a weak economy, individual competing LEC and out-of-region BOC business plans, or poor business planning by potential competitors.”<sup>14</sup> This suggests that the Commission believes that the public interest considerations should only include factors within the control of the applicant. Sprint disagrees. In Sprint's view, consideration of the public interest should include all factors, whether or not they are within the applicant's control, that bear on whether the local market has indeed been irreversibly opened. The fact that the carriers which are best prepared to enter the local markets are not even attempting to do so in any market outside their local territories is indicative of some deterrent to entry and should give the Commission pause as it considers whether or not local competition is fully and irreversibly enabled.

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<sup>13</sup> Recently, Verizon has begun edging out beyond its existing local markets in Dallas, Seattle and Los Angeles. These are primarily extensions of its existing facilities to service local businesses. *See*, Reinhardt Krause, “Verizon's Networks Are Going Beyond Firm's East Coast Home Base,” Investor's Business Daily, July 3, 2002, A4. Sprint does not believe such efforts on the part of Verizon to extend its local market represent a significant entry into new local markets.

<sup>14</sup> In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, released February 22, 2002, ¶ 106 (Rhode Island Order).

Perhaps Sprint's experiences can shed some insight into why ILECs have not chosen to compete. Despite its own extensive experience in the local markets as an incumbent LEC with over 8 million access lines, Sprint has no significant CLEC operations today. On the contrary, Sprint has cut back significantly on its previously planned CLEC activities. Over one year ago, Sprint abandoned its local market entry via resale or UNE-P altogether. After efforts to establish local service in selected major markets in Georgia, New York, Texas and California, Sprint determined that entry through either of these means could not be profitable, even taking into account its ability to retain long distance customer accounts. In late 2000, Sprint stopped accepting new residential customers for local service in these markets. It no longer has any residential customers in either Georgia or New York, and only a few remain in California and Texas.

In October 2001, Sprint announced the discontinuance of its Sprint ION residential and business offerings. Sprint had viewed Sprint ION as a breakthrough, integrated offering that promised to give consumers a superior alternative to the local offerings of ILECs. However, after extensive testing, including commercial offering of the service in a number of states, Sprint determined that it could not economically justify continuation or expansion of the service.

Among the factors contributing to Sprint's decision to withdraw from the local market was the difficulty of obtaining the "last mile" facilities needed for the service from the RBOCs. No Bell Company has found it to be in its own interest to cooperate in establishing local competition. Thus, at every turn, there are lengthy delays, inadequate provision of service, and oftentimes high prices.

Due to the delays and failure of the Bell Companies to provide service, as well as the regulatory and legislative uncertainties regarding the future availability of facilities, discussed above, carriers have no assurance about the level of future rates or the availability of services and service elements. Making business decisions to expend massive amounts of capital is, in the face of such uncertainties, very risky.

#### **IV. COMPETITION IN THE VERIZON STATES HAS NOT BEEN FIRMLY ESTABLISHED (PUBLIC INTEREST)**

As noted above, the Act allows competitors to enter the local market via three entry strategies: resale of the incumbent's network, the use of unbundled network elements, or interconnection to the incumbent's network by pure facilities-based providers, or some combination thereof. The Commission has found that all three means of entry should be available:

Congress did not explicitly or implicitly express a preference for one particular strategy, but rather sought to ensure that all procompetitive entry strategies are available. Our public interest analysis of a section 271 application, consequently, must include an assessment of whether all procompetitive entry strategies are available to new entrants.

Michigan 271 Order ¶387. In discussing how it would evaluate whether all strategies are available, the Commission made clear that there should be competition in each means of providing competitive local service and to both business and residential customers:

The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large).

Id. ¶391.

In its Rhode Island Order, the Commission stated that the public interest standard does not require it to “consider the market share of each entry strategy for each type of service.” ¶ 104. However, the public interest standard does require that local competition be healthy and sufficient to endure after RBOC entry. Low levels of facilities-based competition, particularly in the residential market, should signal that competitors are unwilling or unable to make a sizeable investment in the market. If competition is not fully and irreversibly enabled in that market, the RBOC will retain its monopoly control over residential customers, and its entry into the long distance market will not serve the public interest.

Although Verizon claims that meaningful competition exists, competition in the residential market is *de minimis*. In this application, Verizon states that there are only 12,000 CLEC residential lines in Delaware.<sup>15</sup> Sprint estimates that 12,000 residential lines represent approximately 3.2 % of the total residential lines in service in Delaware.<sup>16</sup> In New Hampshire, Verizon identifies approximately 38,000 CLEC residential lines,<sup>17</sup> which Sprint estimates represent about 7.4 % of the total residential lines in Verizon

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<sup>15</sup> Declaration of John A. Torre, Attachment 2, page 3.

<sup>16</sup> In Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, May 22, 2002, Table 8.2, all loops in Delaware were categorized as “Bell Company Loops” as of December 31, 2000. In the FCC’s Statistics of Communications Common Carriers, 2000/2001 Edition, Table 2.4, the number of “Residential Access Lines – Analog” was 379,702 as of December 31, 2000. Thus, the number of CLEC residential lines in Delaware represents 2.3 % of the number of Verizon lines as of December 31, 2000.

<sup>17</sup> Declaration of John A. Torre, Attachment 1, page 3.

territory in New Hampshire.<sup>18</sup> Such low percentages indicate that competitors are not willing to make a sizeable investment in the residential market and that competition in this market has not been fully and irreversibly enabled.

Further jeopardizing CLEC competition, particularly in the residential market, is the precarious financial state of many competitors. As noted in Section II above, the number of CLECs has decreased significantly since the end of 2000, and capital for expansion is severely restricted and high-priced. Thus, CLECs will be unlikely to invest in residential services in the future, and their market share is unlikely to grow.

The Commission has repeatedly stated that “factors beyond the control of the BOC, such as individual competitive LEC entry strategies, can explain low levels of residential competition.”<sup>19</sup> However, small CLEC residential market shares are the norm, not the exception. Clearly, the reluctance of CLECs across the nation to enter the residential market is evidence of a widespread, systemic problem with the development of residential competition which cannot be explained away by “competitive LEC entry strategies.” Rather, the miniscule market shares indicate that factors within the BOCs’ control are preventing the full and irreversible entry of CLECs into the residential market.

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<sup>18</sup> In Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, May 22, 2002, Table 8.2, 93.1 % of the loops in New Hampshire were categorized as “Bell Company Loops” as of December 31, 2000 (801,344/860,595). In the FCC’s Statistics of Communications Common Carriers, 2000/2001 Edition, Table 2.4, the number of “Residential Access Lines – Analog” was 553,068 as of December 31, 2000. Assuming that 93.1 % of these residential lines were provided by Verizon, Verizon would have had approximately 514,900 residential lines. 38,000 lines represent approximately 7.4 % of Verizon’s total number of residential lines.

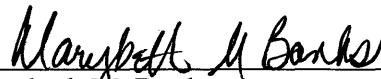
<sup>19</sup> See, e.g., *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, FCC 02-189, at para. 168 (rel. June 24, 2002).

**V. CONCLUSION**

Because Verizon has failed to demonstrate that there is meaningful competition in the five states here at issue, its application for § 271 relief should be denied.

Respectfully submitted,

Sprint Communications Company L.P.



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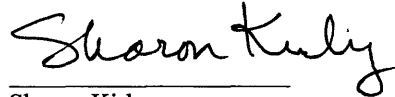
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July 17, 2002

**CERTIFICATE OF SERVICE**

I, Sharon Kirby, do hereby certify that this 17th day of July 2002 copies of the Comments of Sprint Communications Company L.P. on the Application by Verizon New England Inc., *et al*, for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157, will be delivered as indicated below to the following parties:



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